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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,809	07/17/2003	Jean-Louis Gueret	124370	8971

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EXAMINER
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WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 08/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/620,809

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

David J. Walczak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-65 is/are pending in the application.
- 4a) Of the above claim(s) 3,9,10,23-25,27,33,39,40,53-55,59 and 63-65 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-8,11-17,20-22,26,28-30,32,34-38,41-47,50-52,56-58, 60 and 62 is/are rejected.
- 7) ☒ Claim(s) 18,19,31,48,49 and 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/13/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 57 is objected to because of the following informalities: On line 2 of claim 57, "a housing" should be --the receptacle—since claim 32 defines a receptacle containing the first substance (also see the amendment made to claim 28 by the Applicant). Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 5-8, 11-14, 21, 26, 28-30, 32, 35-38, 41-44, 51, 56-58, 60 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Stevens. In regard to claim 1, Stevens discloses a packaging and dispenser device comprised of a receptacle g (the pen or pencil) containing a first substance (the lead or ink), an application surface (the pen tip or lead tip) secured to the receptacle during application of the first substance and a closure capsule "a" of the receptacle and configured to be removably fixed on the receptacle wherein the closure capsule comprises a fixing means (the interior thereof in which the receptacle is positioned) enabling the capsule to be fixed onto the receptacle and a housing "b" containing a second substance (when the substance is drained into

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housing b wherein the housing is configured so that the second substance can be withdrawn through an opening at the end of the capsule remote from the fixing means and the housing b is configured to remain linked to the fixing means during withdrawal of the second substance and wherein the second substance is a "care product" (i.e., water). In regard to claim 2, the housing b is removable and thereby forms a removable portion. In regard to claim 5, the removable portion includes a body b and a lid d. In regard to claim 6, the lid and body closes the housing in "substantially" a leak-tight manner. In regard to claim 7, the body is fixed on the base portion of the capsule by friction. In regard to claim 8, the first substance (lead or ink) is considered a "cosmetic". In regard to claim 11, the above defined application surface is defined by a first applicator member. In regard to claim 12, the first applicator member is able to be disposed in an inner space of the capsule when the capsule closes the receptacle. In regard to claim 13, the first applicator comprises a non-porous material (the lead). In regard to claim 14, the first applicator member (the pen tip) must be "pierced" by at least one orifice in order for ink to be dispensed. In regard to claim 21, the closure capsule includes a lid d. In regard to claim 26, the capsule is friction fit onto the receptacle. In regard to claim 28, the capsule enables leak tight closure (at least to some degree, depending on the substance that is prevented from leaking into the capsule) of the receptacle. In regard to claim 29, the capsule isolates the application surface. In regard to claim 30, the second substance in the housing is "complementary" to the first. In regard to claims 32, 35-38, 41-44, 51, 56 and 57-60, as discussed supra, the Stevens reference discloses the claimed structure.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 15-17, 20, 22, 34, 45-47, 50 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stevens. In regard to claims 4 and 34, although the Stevens reference does not disclose the specific colors/materials used for the various elements, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that any suitable colors/material (and combinations thereof) can be used when making the Stevens device without effecting the overall operations of the device. In regard to claims 15-17, 20, 45-47 and 50, although the Stevens reference does not disclose the specific type of tip used for the pen (the "first applicator member"), it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that any suitable, well known tip, including porous, foam tips formed with different layers can be used to dispense ink from the pen without effecting the overall operation of the device. In regard to claims 22 and 52, although the lid is not connected via a hinge, it is the Examiner's position that the lid can be attached via any suitable and well-known attachment, including a hinge, without effecting the overall operation of the device.

***Allowable Subject Matter***

Claims 18, 19, 31, 48, 49 and 61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to claims 1 and 32 have been considered but are moot in view of the new grounds of rejection.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



David J. Walczak  
Primary Examiner  
Art Unit 3751

DJW  
7/25/06